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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-43

Dear Ms. Dortch:

On June 13, 2018, Jill Luckett and I, of NCTA – The Internet & Television Association, spoke by telephone with Alison Nemeth, Media Advisor to Chairman Pai, and Mary Beth Murphy and Martha Heller of the Media Bureau, regarding the above-captioned proceeding.

We noted NCTA’s support for an increase in the number of video-described hours per quarter (to 87.5 hours) that covered networks must air beginning in July 2018. However, for the reasons stated in NCTA’s pending petition for partial reconsideration (“*Petition*”),¹ we explained that even though we expect that the total amount of programming with video-description on covered networks would meet or might even significantly exceed the quarterly requirement, non-broadcast program networks would still need relief.

In particular, we highlighted the challenges non-broadcast networks face due to the restrictive treatment of repeat airings of video-described programming under the rules, which permit networks to count only a single rerun toward meeting the quarterly benchmark.² We explained that non-broadcast networks covered by the video description rules anticipate difficulty reaching the 87.5 hours per quarter benchmark given their typical program schedules, which contain repeat airings of a significant amount of video-described programming that cannot be counted toward compliance.

We explained why the rules should include a “presumptive waiver” or “safe harbor” that would enable a non-broadcast network to avoid filing for an individual waiver on a quarterly basis. We noted that NCTA’s *Petition* had proposed that the Commission adopt a safe harbor so that a network that is unable to provide 87.5 hours of “countable” video-described programming

¹ See NCTA *Petition for Partial Reconsideration* at 2-3 & n.4 (filed Sept. 11, 2017) (“*Petition*”).

² 47 C.F.R. §79.3(c)(2).

in a particular calendar quarter would still be considered in compliance if it otherwise provides a substantial amount of video-described programming.³ Since NCTA’s Petition was filed, we have further refined the proposal based on member outreach to representatives of the blind and visually-impaired community. Specifically, we proposed that the Commission adopt a presumptive waiver for a non-broadcast network that certifies it will provide video-description on (1) at least 1,000 total program hours each quarter without regard to repeats, *and* (2) at least 75% of any newly-produced non-live programming aired between 6 A.M. and midnight per quarter.

We also proposed that the Commission adopt an additional modification to its rules to allow non-broadcast networks to “refresh” their counting of repeat programming that contains video-description. Once a particular non-broadcast network has counted its one repeat of a video-described program towards compliance, the rules do not allow that network to ever count that same video-described program again towards compliance, no matter how many years have passed. As explained in the *Petition*, the Commission should “allow the cycle for counting repeats to start over after a period of years, given the lasting appeal of many of these programs, the lengthy contract terms governing their exhibition, and children ‘aging up’ into the audience demographic for certain repeat programming.”⁴

Respectfully submitted,

/s/ Diane B. Burstein

Diane B. Burstein

cc: Alison Nemeth
Mary Beth Murphy
Martha Heller

³ Petition at 8-9.

⁴ *Petition* at 8. We noted that, while the “refresh” aspect of NCTA’s Petition has not been part of the discussions with the consumer groups relating to the “presumptive waiver,” the concept was discussed in comments on NCTA’s Petition filed by the National Federation of the Blind (NFB). NFB commented that “[w]e agree that after a period of time the networks should be able to re-air video-described programming and have it count toward the minimum hour requirement.” Letter from Mark A. Riccobono, President, Nat’l Federation of the Blind, to Marlene H. Dortch, Secretary, FCC, filed in MB Dkt No. 11-43 (Oct. 17, 2017).